

Leadership...Service...Accountability

May 10, 2012 Civil Rights Monitoring Office

Executive Summary Section 504

District/Charter School Open Enrollment Practices: Impact on Federal Civil Rights Protected Class Students

Dear Colleague:

The following summary of information is being shared with you as a result of:

- USOE, Civil Rights Monitoring Office civil rights inquiries and complaints database information
 indicating an increased pattern of "open enrollment practices" related to protected class
 student discrimination.
- A current federal level, Utah-specific, school district discrimination case, that substantiates the pattern of "open enrollment practices" that:
 - 1. may be in violation of the rights of federal civil rights protected classes, and
 - 2. may, in Utah school districts and charter schools, be more widespread than anticipated.

NOTE:

This document is a USOE-specific summary of information from communications from the Region VIII, OCR, to the Murray School District, whose Superintendent, Dr. Steven K. Hirase, graciously approved it being shared to alert sister districts and charter school colleagues.

This document, while containing information cited from OCR "Letters of Findings," <u>is not a formal statement of OCR policy</u>, and should not be relied upon, cited or construed as such.

On *April 18, 2011*, the U.S. Department of Education, Region VIII, Office for Civil Rights, (OCR), received a complaint alleging the Murray School District (District) discriminated on the basis of disability. The complainant was investigated pursuant to Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990.

- A. On *October 24, 2011*, after determining jurisdiction to investigate the complaint, **OCR** reviewed the data submitted by the District and determined that:
 - The complainant's allegation that the "District discriminated against her son (Student), on the basis of disability, by denying his application for open enrollment because he had an Individualized Education Program (IEP), had class-wide implications."
 - 2. "The District's use of its funding measurement for determining special Education capacity had the effect of discriminating against the Student and on non-resident special education students

(Oct. 28, 2011, Region VIII, OCR Letter of Findings, pp. 2, 3) (See full text @ (http://schools.utah.gov/equity/Civil-Rights-Information.aspx)

continued on page 2



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Page 2 of 2 - USOE Section 504 Open Enrollment Executive Summary 5/4/12

B. On **November 15, 2011**, in response to the OCR findings, the Murray School **District** submitted a complaint "resolution agreement" formatted, in this document, for your reference convenience, as follows:

Region VIII, OCR Remedial Findings

"The District applies different policies for admitting non-resident students depending on whether the students are in special education or non-disabled."

District Resolution Agreement Steps

District revised open enrollment policy and procedures to ensure that when a disabled student applies through the District's "open enrollment program," the District will:

- **a.** consider the individual needs of the student and
- **b.** whether it [District] can meet those needs when determining whether there is capacity to accept the student."

"By **October 2, 2012**, the District will provide OCR documentation demonstrating compliance with its revised policies and procedures."

District will provide OCR copies of each each student's application (disabled and non-disabled) and documentation showing:

- c. whether the applicant was offered enrollment
- **d.** whether the applicant actually enrolled,
- **e.** whether the applicant is a student with a disability.
- f. for every applicant with a disability the District will provide OCR copies of documentation showing individual needs of every student applicant with disabilities, and g. a description of the reasons for not
- offering enrollment and documentation supporting its reasons.

Source: Resolution Agreement, Murray School District (http://www.schools.utah.gov/equity/)

SUMMARY

Some current patterns of Utah district and charter school "open enrollment practices" that may be discrimination "red flags," as they may impact protected class students, include, but are not limited to:

- 1. Requiring parents to re-enroll their children in charter schools each year, after first-year acceptance as part of lottery selection and/or having sibling enrolled in the school.
- 2. Blanket denial of open enrollment of students with disabilities, as a class. (See a., b. above.)
- 3. Failing to follow "appropriate due process" practices when considering exclusion or expulsion of students with disabilities, family language barriers, etc.
- 4. Preferential enrollment to students achieving above average grades, having consistent attendance, or having exemplary behavior with no suspensions.